

**EMPLOYMENT DISPUTE RESOLUTION PLAN  
FOR THE  
UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

**CHAPTER I - GENERAL PROVISIONS**

**§ 1 Preamble**

This Plan shall be known as the Employment Dispute Resolution Plan ("EDR Plan" or "Plan") for the United States Bankruptcy Court for the Western District of Michigan ("court"). It is based upon the Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States ("JCUS") in order to provide rights and protections to employees of the United States courts that are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

This Plan supersedes all previous versions of the EDR Plan and Appendix I ("Discrimination and Complaint Procedures") of the current Equal Employment Opportunity Plan of the United States Bankruptcy Court for the Western District of Michigan ("EEO Plan"), except for Section VI of Appendix I ("Annual Report") imposing requirements on the courts. Claims arising under Chapters II through VII of this Plan, or under Sections I through VII of the EEO Plan, shall be treated in accordance with the procedures set forth in Chapter IX of this Plan. The duties of the court's EEO Coordinator will be assumed by the Employment Dispute Resolution Coordinator (established in Section 6 of Chapter IX of this Plan), except that the dispute resolution duties assigned to the EEO Coordinator under the EEO Plan will be replaced by the dispute resolution procedures set forth in Chapter IX of this Plan.

This plan is to be implemented in the same manner as the EEO plan. Any modification of this Plan must first be approved by the Judicial Council of the Sixth Circuit Court of Appeals ("Circuit"). A copy of each plan and any subsequent modifications shall be filed with the Administrative Office of the United States Courts ("A.O." or "Administrative Office"). A copy of each plan is posted on the court's internal and external website. The court will annually submit a report on the implementation of its plan to the Administrative Office for inclusion in the Director's Annual Report to the JCUS.

Policies adopted by individual courts pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections afforded under the Model EDR Plan are not affected by the Plan. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein will not be affected by the Plan.

The EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial officer misconduct or disability under 28 U.S.C. §§ 351, et seq. and

otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

## **§ 2 Scope of coverage**

This Plan applies to all judges of the United States Bankruptcy Court for the Western District of Michigan, as well as to all employees of United States Bankruptcy Court for the Western District of Michigan, including judges' chambers staffs, the clerk of this court and all deputy clerks.

## **§ 3 Definitions**

For purposes of this Plan:

- A. The term "claim" means the filing of a request for counseling as set forth in Chapter IX, which may be further pursued by the filing of a request for mediation and a request for hearing.
- B. The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include interns or externs providing gratuitous service, applicants for bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators not employed by federal public defenders, volunteer counselors or mediators, or other individuals who are not employees of an "employing office" as that term is defined below.
- C. The term "employing office" means the United States Bankruptcy Court for the Western District of Michigan. The court is the employing office of a judicial officer's chambers staff.
- D. The term "judicial officer" means a judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, a judge on the Court of Federal Claims, or a judge of any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.
- E. The term "court" refers to the United States Bankruptcy Court for the Western District of Michigan in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint.

## CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

**§ 1 General** - Discrimination against employees based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. All of the above constitute “wrongful conduct.” The rights and protections of Sections I through VII of the court’s Equal Employment Opportunity Plan (“EEO Plan”) shall also apply to employees.

**§ 2 Definition** - The term "disability" means:

- A. a physical or mental impairment that substantially limits one or more of the major life activities of an employee,
- B. a record of such an impairment, or
- C. being regarded as having such an impairment.

*See 42 U.S.C. § 12102(2).*

## CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

**§ 1 General** - Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381 et. seq., applies to court employees in the manner prescribed in Volume 12, Chapter 9, Section 920.20.35 of the *Guide to Judiciary Policy*.

## CHAPTER IV - WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

**§ 1 General** - No “employing office closing” or “mass layoff” (as defined in Section 2 of this Chapter) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff which results from the absence or diminution of appropriated funds.

**§ 2 Definitions**

- A. The term "employing office closing" means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

- B.** The term "mass layoff" means a reduction in force which:
- 1.** is not the result of an employing office closing; and
  - 2.** results in an employment loss at the single site of employment during any 30 day period for
    - a.** (1) at least 33 percent of the employees (excluding any part-time employees); and
    - (2) at least 50 employees (excluding any part-time employees); or
    - b.** at least 500 employees (excluding any part-time employees).

*See 29 U.S.C. § 2101.*

#### CHAPTER V - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

- § 1 General** - The court shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 et seq.

#### CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

- § 1 General** - The court shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service ("USPS") to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.
- § 2 Court program requirements** - The court shall implement a program to achieve the protections set forth in Section 1 of this Chapter.

#### CHAPTER VII - POLYGRAPH TESTS

- § 1 General** – Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

## CHAPTER VIII – REPORTS OF WRONGFUL CONDUCT

- § 1 A report of wrongful conduct is not the same as initiating or filing a claim under this Plan; thus, employees who wish to file an EDR claim relating to any alleged wrongful conduct as defined in Chapter II, §1 must follow the procedures set forth in Chapter IX of this Plan.
- § 2 Judges and employees are encouraged to report wrongful conduct to the court's EDR Coordinator, the chief judge, unit executive, human resources manager, or their supervisor as soon as possible, before it becomes severe or pervasive. Retaliation against any employee making a report of wrongful conduct is prohibited. The person receiving such a report has the responsibility to notify the EDR Coordinator as soon as possible.
- § 3 The EDR Coordinator shall promptly inform the chief judge and unit executive of any report. The chief judge and/or unit executive shall ensure that the allegations in the report are appropriately investigated, either by the human resources manager or other person.
- § 4 All individuals involved in the investigation shall protect the confidentiality of the allegations of wrongful conduct to the extent possible. Information and records about the allegations shall be shared on a need-to-know basis.
- § 5 Employees found by the chief judge and/or unit executive to have engaged in wrongful conduct, as defined in this Plan, may be subject to disciplinary action.

## CHAPTER IX - DISPUTE RESOLUTION PROCEDURES

- § 1 **Procedures for consideration of alleged violations** - An employee who claims a denial of the rights granted under Chapters II through VII of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the process consists of:
- A. counseling and mediation;
  - B. hearing before the chief judge of the court (or a judicial officer designated by the chief judge) in which the alleged violation arises; and
  - C. review of the hearing decision under procedures established by the judicial council of the circuit.
- § 2 **Alleged Violation by Employee** - Before invoking a request for counseling an employee (to the extent feasible) is encouraged to bring his or her concerns to his or her supervisor or unit executive, unless the supervisor or unit executive is the alleged violator. In such a situation, the court or employing office should specify alternative neutral points of contact for the initial inquiry. An employee alleging that any of the rights granted under the EEO Plan or this EDR Plan have been violated, and who seeks relief under this Plan, must file a request for

counseling with their court's EDR Coordinator in accordance with Section 8 of this Chapter.

**§ 3 Alleged Violation by Judge** - Any employee alleging that a judge violated any rights granted under the EEO Plan or this EDR Plan may file an EDR claim in accordance with this Plan. In such an instance, however, all the claims procedures of this Chapter shall be performed by the Circuit, either by members of the council directly or by persons designated to act on its behalf, which may include the chief judge of the Circuit. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the Circuit or its designee, which may include the chief judge of the Circuit, will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, the EDR Plan. In so doing, the Circuit or its designee, who may include the chief judge of the Circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

**§ 4 Confidentiality** - The court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.

**§ 5 General provisions and protections**

- A. Prohibition against retaliation** - Employees under this Plan have the right to be free from retaliation because of filing a claim pursuant to this Plan. Likewise, any person who participates in the filing or processing of a claim, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.
- B. Right to representation** - Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's appointing officer.
- C. Case preparation** -To the extent feasible, every employee invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her court duties.
- D. Extensions of time** - The chief judge of the court, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter IX for good cause.

**E. Dismissal of claim** - On his or her own initiative or at the request of any party, the chief judge or presiding judicial officer may, at any time in the proceedings, dismiss a claim on the ground that: (1) it does not pertain to violations of the rights or protections granted under the EEO Plan or this EDR Plan, (2) is untimely, (3) is unduly repetitive of a previous claim, adverse action, or grievance, (4) is frivolous, or (5) fails to state a claim upon which relief may be granted.

**F. Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the court's EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.

**§ 6 Designation and duties of employment dispute resolution coordinator** - A deputy clerk who is not a member of the court's management staff shall serve as the EDR Coordinator. Likewise, an alternate EDR Coordinator who is also not a member of the court's management staff shall be designated. In the event of the disqualification of one of the EDR Coordinators, the Clerk may designate a replacement EDR Coordinator. The duties of the EDR Coordinators shall include the following:

- A.** to provide information to the court and employees regarding the rights and protections afforded under this Plan;
- B.** to coordinate and organize the procedures and establish and maintain official files of the court pertaining to claims and other matters initiated and processed under the court's employment dispute resolution plan;
- C.** to coordinate the counseling of individuals in the initial stages of the claims process, in accordance with Section 8 of this Chapter IX; and
- D.** to collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process.

**§ 7 General disqualification provision** - The court and Circuit will make available procedures through which a party may seek the disqualification of a judicial officer, employee or other person involved in a dispute under this chapter.

## **§ 8 Counseling**

- A. Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through VII-inclusive, of this Plan may have been violated shall first request counseling.

**B. Form and manner of requests - Requests for counseling:**

1. shall be submitted to the court's EDR Coordinator;
2. shall be in writing and specifically state all the alleged violations asserted by the employee; and
3. shall be made within 30 days of any alleged violation or shall be made within 30 days of the time the employee first becomes aware of any alleged violation.

**C. Procedures**

1. **Who may serve as counselor** - The counseling shall be conducted by the court's EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 7 of this Chapter IX, or is otherwise unavailable. In such instances, the chief judge of the court shall designate another qualified individual who is willing to serve to perform the counseling function. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and the chief judge of the court.
2. **Purposes of counseling** - The purpose of the counseling is: (a) to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; (b) to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; (c) to evaluate the matter; and (d) to assist the employee in achieving an early resolution of the matter, if possible.
3. **Confidentiality** - Unless waived by the employee, the court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.
4. **Form of settlement** - The EDR Coordinator shall prepare a succinct written report which describes any settlement achieved during the counseling process. Any such settlement report shall be countersigned by the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into the settlement on behalf of the employing office.

**D. Duration of counseling period** - The period for counseling shall be 30 days (or a shorter period if counseling is concluded at an earlier date), beginning on the date that the request for counseling is received by the EDR Coordinator.



- E. Conclusion of the counseling period and notice** - The EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EDR Coordinator shall inform the employee of the right and mandatory obligation, should the employee choose to continue to pursue his or her claim, to file with the EDR Coordinator a written request for mediation in accordance with Section 9 of this Chapter IX.

## **§ 9 Mediation**

- A. Initiation** - Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EDR Coordinator a request for mediation. The request shall be made in writing and shall specifically state the claim(s) alleged. The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive and the chief judge of the court. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter IX.
- B. Procedures**
- 1. Designation of mediator** - As soon as possible after receiving the request for mediation, the chief judge or EDR Coordinator shall designate a mediator and provide written notice of such designation.
  - 2. Who may serve as mediator** - Any person with the skills to assist in resolving disputes, except the court's EDR Coordinator, may serve as a mediator under this Plan.
  - 3. Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.
  - 4. Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives.
  - 5. Form of settlement** - The mediator shall prepare a succinct written report which describes any settlement achieved during the mediation process. Any such settlement report shall be countersigned by the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into the settlement on behalf of the employing office.

- C. **Duration of mediation period** - The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee shall attend at least one mediation session. If the employee fails or refuses to attend a mediation session, the complaint may be dismissed or the mediator may grant an additional reasonable period of time for the employee to attend a mediation session. After conclusion of the mediation session, the employee may file a written request for hearing.
- D. **Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 10 of this Chapter IX.

## **§ 10 Complaint and hearing**

- A. **Complaint** - Not later than 15 days after receiving notice of the conclusion of the mediation period, an employee may file a complaint under procedures established by the court. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought. Any claim(s) that were not specifically alleged in writing in §9(A) of this Chapter IX may not be pursued by the employee. The respondent shall be the appropriate employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint.
- B. **Hearing procedures**
1. **Presiding judicial officer** - If the chief judge or presiding judicial officer does not dismiss the complaint, the chief judge or presiding judicial officer shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
  2. **Specific provisions** - The chief judge or presiding judicial officer may provide for reasonable discovery and investigation as may be necessary to obtain a just result. The chief judge or the presiding judicial officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:
    - a. the hearing shall be commenced no later than 60 days after the filing of the complaint unless the chief judge or the presiding judicial officer

adjourns or continues the hearing for cause;

- b. the complainant and the respondent shall be given written notice of the hearing; such notice shall also be provided to any other individual alleged to have violated rights protected under this Plan;
- c. at the hearing, the complainant will have the right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the respondent will have the right to present evidence on its behalf and to cross-examine adverse witnesses;
- d. a verbatim record created by a court reporter or a digital recording of the hearing shall be kept and shall constitute the sole official record of the hearing;
- e. in reaching his or her decision, the chief judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII, inclusive, of this Plan and by decisions of the Sixth Circuit under Section 11 of this Chapter IX;
- f. remedies may be provided in accordance with Section 12 of this Chapter IX where the chief judge or presiding judicial officer finds that the complainant has proved, by a preponderance of the evidence, that a substantive right protected by this Plan has been violated;
- g. the final decision of the chief judge or presiding judicial officer shall be issued in writing not later than 30 days, or such reasonable longer period for good cause stated in writing (e.g. illness), after the conclusion of the hearing; and
- h. all parties shall be given a right to written notice of any action taken as a result of a hearing.

**§ 11 Review of decision** - The parties shall have the right to review the final decision of the chief judge, or presiding judicial officer, or resulting from a summary dismissal of the complaint. A party may seek review of the decision under procedures established by the Sixth Circuit. Any review will be conducted by the Sixth Circuit, based on the record created by the hearing officer. The Circuit shall review the matters properly brought before it and render its decision including possible affirmance, reversal or remand.

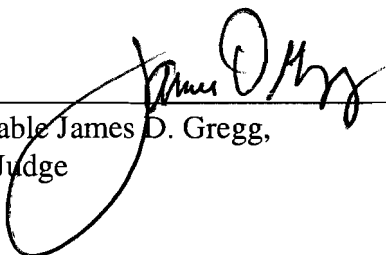
## **§ 12 Remedies**

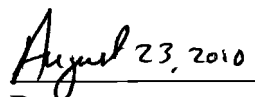
- A.** Where a judicial officer acting pursuant to section 10 or 11 of Chapter IX of this Plan determine that a substantive right protected by this Plan has been violated, a necessary and appropriate remedy shall be ordered. The remedy may be directed at correcting a past violation, prospectively insuring future compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B.** Remedies which may be provided to prevailing complainants under this Plan include, but are not limited to:
1. placement of an employee in a position previously denied;
  2. placement in a comparable alternative position;
  3. reinstatement to a position from which the employee was previously removed;
  4. prospective promotion to a position;
  5. priority consideration for a future promotion or position;
  6. award of back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
  7. records modification and/or expungement;
  8. "equitable" relief, such as temporary stays of adverse actions;
  9. granting of family and medical leave; and
  10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours; or
  11. Other appropriate remedies as may be appropriate (except for the excluded remedies in paragraph C below).
- C.** Remedies which are *not* legally available are:
1. payment of attorney's fees (except to the extent, if any, authorized under the Back Pay Act);

2. compensatory damages; and
3. punitive damages.

§ 13 **Record of final decisions** - Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Sixth Circuit.

Approved:

  
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Honorable James D. Gregg,  
Chief Judge

  
\_\_\_\_\_  
Date